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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of )  
 )  
TRINITY CHRISTIAN CENTER OF SANTA )  
ANA, INC., d/b/a TRINITY )  
BROADCASTING NETWORK )  
 )  
For Renewal of License of )  
Television Station WHSG(TV) )  
Monroe, Georgia )  
 )  
GLENDALE BROADCASTING COMPANY )  
 )  
For Construction Permit )  
Monroe, Georgia )

MM Docket No. 93-158

BRCT-911129KR

BPCT-920228KE

To: Hon. Joseph Chachkin  
Administrative Law Judge

**REPLY TO OPPOSITION TO  
CONTINGENT MOTION TO ENLARGE ISSUES**

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity"), by its counsel, pursuant to Section 1.294(c)(1) of the Commission's Rules, submits the following reply to the "Opposition to Contingent Motion To Enlarge Issues" filed on September 1, 1993, by Glendale Broadcasting Company ("Glendale").<sup>1/</sup>

<sup>1/</sup> The Mass Media Bureau supports the addition of the requested financial issue "absent a persuasive showing" that George Gardner "has sufficient assets to finance Glendale's proposal." (See, "Mass Media Bureau's Comments on Contingent Motion To Enlarge Issues" filed September 1, 1993, pp. 4, 5.) Glendale has made no such showing.

### A. Introduction

1. Trinity urged in its motion that a financial qualifications issue be designated against Glendale because George Gardner plainly did not take the steps necessary under Commission policy to ascertain whether his non-liquid assets were sufficient to cover Glendale's estimated costs.<sup>2/</sup> In particular, Gardner's own loan commitment letter and Glendale's failure to produce any evidence of appraisals -- or even to dispute the point -- make clear that Gardner did not appraise his non-liquid assets before claiming reasonable assurance of adequate financing.<sup>3/</sup> Having thus certified without a proper basis, Glendale was not financially qualified when it filed its application, and an appropriate issue is warranted.

2. Glendale makes two arguments in response. First, Glendale contends that Gardner was not required to obtain professional appraisals before he certified. Opposition, p. 6. Second, Glendale argues that even if appraisals were required,

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<sup>2/</sup> Although the Presiding Judge has denied Trinity's motion to dismiss Glendale's application on this ground (Tr. 9), designation of the application for hearing on a financial qualifications issue remains a proper course of proceeding. An applicant may be financially unqualified even if its application is not dismissable.

<sup>3/</sup> Glendale has not replaced Gardner's financial commitment letter with a bank letter, as it did in Miami (Docket No. 93-75). Thus, Glendale's entire financial standing rests on Gardner's letter, which on its face acknowledges that his liquid assets were insufficient to cover his commitment but makes no mention of appraisals.

Trinity has not met its burden under Section 1.229(d) of showing that no appraisals were conducted. In this connection, says Glendale, the Commission may draw no inference from Glendale's failure to state that appraisals were done or deny that they were not done. Id., pp. 6-7.

3. Although Glendale has correctly identified two pertinent legal questions, Glendale's position on these two points is without merit. As discussed below, Glendale misreads the law, as to both (1) what Commission policy requires for reasonable assurance of financing when an applicant relies on non-liquid assets, and (2) the basis on which the Commission may properly find the need for a hearing.

**B. Appraisals of Non-Liquid Assets Were Required**

4. The Commission has made clear that an applicant lacked reasonable assurance unless it took "the necessary steps to ascertain that the lender, when not a financial institution, ha[d] sufficient financial resources to meet his loan commitment at the time of certification." Aspen FM, Inc., 6 FCC Rcd 1602, 1603 (¶8), 68 RR 2d 1635, 1637 (1991). Here, where George Gardner was functionally both the applicant and the lender, this policy required that, before he could have reasonable assurance that Glendale was financially qualified, he take the "necessary steps" to "ascertain" whether his personal resources were sufficient.

5. Since Gardner was relying on non-liquid assets, and since the Commission does not permit reliance on such assets unless they have been appraised, one of the "necessary steps" was to obtain appraisals of the non-liquid assets. Only by doing that could Gardner "ascertain" that his assets were sufficient to meet his commitment. It is meaningless that his financial statement listed his assets at \$11,997,327. Values assigned to non-liquid assets in a financial statement are simply not recognized by the Commission for reasonable assurance purposes unless supported by current appraisal. Otherwise applicants could arbitrarily and subjectively list their non-liquid assets at whatever values were needed on paper to show adequate financial strength.<sup>4/</sup> Without appraisals, Gardner lacked reasonable assurance because he could not possibly have known whether his assets were sufficient under Commission policy.

6. Glendale misses the point completely in arguing that the Form 301 instructions do not include appraisals among the documentation an applicant must have in hand when it files. Opposition, pp. 4-5. The issue is not documentation of Gardner's efforts. The issue is whether he made the effort at

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<sup>4/</sup> In this connection, the Mass Media Bureau correctly notes that the absence of appraisals requires a hearing because there is no assurance that Gardner could raise enough money from his non-liquid assets (of unspecified nature and value) to cover his obligation to Glendale. MMB Comments, supra, p. 4.

all to "ascertain" the value of his non-liquid assets in order to determine reasonable assurance -- as Commission policy required him to do. Aspen FM, Inc., supra.

7. It is no distinction, as Glendale claims, that applicants in earlier cases were permitted to wait until hearing before obtaining appraisals of non-liquid assets that were relied upon when the application was filed. Opposition, p. 4. The applications in those cases were all filed before the Commission made a fundamental policy change in 1989. Prior to 1989, applications were accepted for filing even if the applicant failed to certify in the affirmative that it was financially qualified. In 1989, however, the Commission changed that policy, declaring that henceforth an application would be returned as non-tenderable if the applicant did not certify in the affirmative that it had the necessary reasonable assurance of financing.<sup>5/</sup> This seminal policy change made "don't know" an unacceptable state of mind at the time of filing, which in turn henceforth made it imperative that applicants take all required steps to determine reasonable assurance before filing. Since appraisals are the means under Commission policy by which one must ascertain how much money non-liquid assets will produce, it is clear that applicants must now conduct such appraisals before reasonable assurance can be found. No longer

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<sup>5/</sup> In the Matter of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853, 3859, 66 RR 2d 519, 529 (1989).

can an applicant claim reasonable assurance without investigating, and then hope he can prove at a hearing that he was right.

8. Contrary to Glendale's contention, therefore, George Gardner was required to get his non-liquid assets appraised before claiming reasonable assurance of adequate funding. His manifest failure to do so requires a financial qualifications issue.

**C. The Record Clearly Raises a Substantial and Material Question of Fact Concerning the Absence of Appraisals**

9. The record here establishes beyond any legitimate dispute that Gardner never appraised his non-liquid assets. Compelling evidence of this comes from Gardner's loan commitment letter (which pointedly makes no mention of appraisals) and Glendale's response to the issue (which pointedly refrains from claiming that appraisals were done).

10. In contending that Trinity has not met "its burden of proving" that Gardner lacked appraisals (Opposition, p. 6), Glendale misconstrues what is required. A hearing is called for under 47 U.S.C. §309(e) if there is a "substantial and material question of fact" or if the Commission "for any reason is unable to make the finding" that grant of the application would be in the public interest. It is not necessary that a petitioner

submit affidavits if the facts are subject to official notice.  
See, 47 U.S.C. §309(d)(1); 47 C.F.R. §1.229(d).

11. Here, the facts that raise a substantial and material question are before the Commission and subject to official notice. As noted above, they are: (a) the absence of any mention of appraisals in Gardner's loan commitment letter filed with the application; and (b) Glendale's failure, despite repeated opportunities, to state that appraisals were done. These two facts are undisputed. The natural and obvious inference from these facts is that no appraisals were conducted.

12. Glendale does not dispute that under Gencom, Inc. v. FCC, 832 F.2d 171, 180-81 (D.C. Cir. 1987), and Citizens for Jazz on WRVR v. FCC, 775 F.2d 392, 394-96 (D.C. Cir. 1985), the Commission is empowered to draw inferences from the evidence when determining whether to designate an issue. Instead, Glendale stresses that inferences may be drawn only from "undisputed evidentiary facts."<sup>6/</sup> What Glendale refuses to recognize is that the two facts cited above are undisputed evidentiary facts. They are facts of record, they are subject to official notice, and they are not in dispute.<sup>7/</sup> It is

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<sup>6/</sup> Opposition, p. 7, quoting Gencom, Inc. v. FCC, supra (emphasis supplied by Glendale).

<sup>7/</sup> Glendale appears to be suggesting that its failure to say that appraisals were done is not an "evidentiary fact" from which an inference may be drawn. However, the Commission does draw inferences when a party fails to present  
(continued...)

therefore perfectly proper for the Commission to infer in this case that no appraisals were done because Glendale will not say that they were done. Moreover, Glendale's argument that appraisals were not required further corroborates that none were conducted.

13. The ultimate test for issue enlargement is "whether the totality of the evidence arouses sufficient doubt on the point that further inquiry is called for." Citizens for Jazz on WRVR v. FCC, supra, 775 F.2d at 395. Everything before the Commission here clearly arouses significant doubt about whether Glendale obtained the appraisals that were necessary to support its claim of reasonable assurance. At the very least, all things considered, the Commission is without sufficient information to find that Glendale is financially qualified. Thus, under 47 U.S.C. §309(e), a hearing on the issue is plainly warranted.

#### D. Conclusion

14. When an applicant relies on non-liquid assets, the value of those assets must be ascertained through appraisals.

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<sup>1/</sup>(...continued)

exonerating information within its control. WWOR-TV, 7 FCC Rcd 636, 641 (¶40) (1992); Washoe Shoshone Broadcasting, 3 FCC Rcd 3948, 3953, 64 RR 2d 1748, 1755 (Rev. Bd. 1988); Port Huron Family Radio, Inc., 4 FCC Rcd 2532, 2535, 66 RR 2d 545, 550 (Rev. Bd. 1989). Thus, such a circumstance is an evidentiary fact that the Commission will consider in making its determination.

Otherwise the applicant has no objective basis to support the proposition that non-liquid assets are sufficient to meet its financial requirements and that it has reasonable assurance. Here, it is absolutely clear from George Gardner's loan commitment letter and his response to this issue that he conducted no appraisals. That factual inference is not only permissible under Commission policy, it is compelled by this record. Moreover, it is a fact not disputed by Glendale. Since Gardner did not take the steps necessary to gain reasonable assurance, a substantial and material question about Glendale's financial qualifications exists, and a financial qualifications issue must be designated. In any event, as the Bureau observes, an issue is also required because without an appraisal Glendale has not shown that Gardner's non-liquid assets were in fact sufficiently valuable and marketable to meet his loan commitment.

Respectfully submitted,

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September 7, 1993

CERTIFICATE OF SERVICE

I, Nathaniel F. Emmons of the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that on this 7th day of September, 1993, copies of the foregoing "Reply to Opposition Contingent Motion To Enlarge Issues" were sent by first class mail, postage prepaid, to the following:

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